

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JASON VON ESSER,

:

Plaintiff

:

CIVIL ACTION NO. 3:16-2113

v.

:

**(D.J. MANNION)
(M.J. SAPORITO)**

**NANCY A. BERRYHILL,
ACTING COMMISSIONER OF
SOCIAL SECURITY,¹**

:

:

Defendant

:

**FILED
SCRANTON**

APR 26 2018

PER

DEPUTY CLERK

MEMORANDUM

Pending before the court is the report of Magistrate Judge Joseph F. Saporito filed on March 28, 2018, which recommends that the plaintiff's appeal of the final decision of the Commissioner decision denying his claim for supplemental security income under Title XVI of the Social Security Act be granted and, that the Commissioner's decision be vacated. Judge Saporito also recommends that this case be remanded to the Commissioner to conduct a new administrative hearing pursuant to 42 U.S.C. §405(g). (Doc. 15). On April 12, 2018, the Commissioner waived the opportunity to respond to Judge Saporito's report, (Doc. 16). To date, the plaintiff has not filed any

¹Nancy A. Berryhill is Deputy Commissioner of Operations for Social Security. Although Berryhill is no longer the Acting Commissioner, she is presently acting in the capacity of the Commissioner. Pursuant to Federal Rule of Civil Procedure 25(d), Nancy A. Berryhill is substituted for Carolyn W. Colvin as the defendant in this suit.

objections to the report and the time within which to do so has expired.

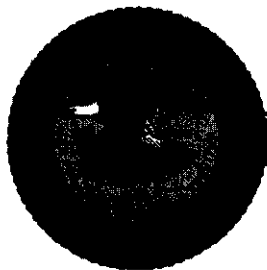
Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed.R.Civ.P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every Report and Recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

The court has reviewed the reasons presented by Judge Saporito for recommending that the plaintiff's appeal be granted and, that the denial of his application for benefits be vacated. Because the court agrees with the sound reasoning that led Judge Saporito to the conclusions in his report and finds no clear error on the face of the record, the court will adopt the report in its entirety. An appropriate order shall issue.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: April 26, 2018

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U.S. Department of Justice

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*Please respond to: **Harrisburg***

April 12, 2018

THE HONORABLE MALACHY E. MANNION

RE: Jason Von Esser v. Commissioner of Social Security
MDPA, Civil No. 3:CV-16-2113

Dear Judge Mannion:

Please be advised that the Defendant hereby waives the opportunity to object to the Report and Recommendation entered by the Magistrate Judge in the above-referenced matter.

Respectfully submitted,

DAVID J. FREED
United States Attorney

/s/ Shana B. Bellin
SHANA B. BELLIN
Assistant U.S. Attorney

cc: **Office of General Counsel, Phila., PA**
Patrick J. Best, Esquire